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UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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Ex parte HUGO LIU and ELIZABETH CHURCHILL
_____

Appeal 2019-003745
Application 14/563,828
Technology Center 3600
_____

Before CARL W. WHITEHEAD JR, DAVID M. KOHUT, and
IRVIN E. BRANCH, *Administrative Patent Judges*.

BRANCH, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the
Examiner's decision to reject claims 1–20. Appeal Br. 1. We have
jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[1] We use "Appellant" to reference the applicant as defined in
37 C.F.R. § 1.42. Appellant identifies the real party in interest as "eBay,
Inc." Appeal Br. 3.

STATEMENT OF THE CASE

Appellant's Invention

According to Appellant:

The present [invention] is directed to. . . identifying item characteristics (e.g., item brands, item types, etc.) that are to eventually become popular [by] . . . identify[ing] popular characteristics of items involved in recent transactions[,] . . . identify[ing] one or more users that executed transactions for items having these popular characteristics during a previous time period[, and] determin[ing] what other item characteristics are prevalent in [the identified users'] more recent transactions.

Abst. Claim 1, reproduced below with added emphases,[2] is illustrative of the claimed subject matter.

> 1.   *A non-transitory machine-useable storage medium embodying instructions which, when executed by a machine, cause the machine to* execute operations for enabling a network-based publication system to provide improved search results and/or recommendations from a plurality of item listings published by the network-based publication system, the operations comprising:
>
> tracking *and storing, by the network-based publication system, electronic* marketplace transaction data comprising user interactions with the plurality of item listings published by the network-based publication system;
>
> receiving, at the network-based publication system, a query for one or more item listings from the plurality of item listings published by the network-based publication system;

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[2] The Examiner finds the unemphasized portions correspond to judicial- exceptions of patent-eligible subject matter and the emphasized portions correspond to additional elements. *See infra* 7–11 (discussion of Steps 2A(1) and (2)).

identifying data representing one or more popular item characteristics based on an analysis of the *electronic* marketplace transaction data from a first time interval;

identifying from the *electronic* marketplace transaction data, a plurality of users who purchased items having at least one of the one or more popular item characteristics during a second time interval earlier than the first time interval;

calculating a first metric value for each of the plurality of users based on each user's purchases of the items having at least one of the one or more popular item characteristics during the second time interval;

selecting, from the plurality of users, a subset of users based on the first metric calculated for each of the plurality of users;

identifying, based on the *electronic* marketplace data, data representing one or more pre-trend item characteristics that correspond to marketplace transactions of the subset of users during a third time interval more recent than the second time interval;

calculating a second metric value for each of the one or more pre-trend item characteristics based on analysis of the *electronic* marketplace transaction data regarding purchases of items having at least one of the one or more pre-trend item characteristics by the subset of users during the third time interval; and

generating display data comprising search results and/or item recommendations identifying one or more item listings *for a client device* to display to a user *via a graphical user interface (GUI)* in response to the query, the one or more item listings selected based, at least in part, on the second metric value calculated for at least one of the one or more pre-trend item characteristics.

Appeal Br., Claims Appendix.

Rejection

Claims 1–20 stand rejected under 35 U.S.C. § 101 as being directed to a judicial exception. Final Act. 7–14.

OPINION

Claims 1–20 are argued as a group. Appeal Br. 8 (heading "V.A."). We select claim 1 as representative. 37 C.F.R. § 41.37(c)(1)(iv). For the following reasons, we are unpersuaded of error in the rejection of claim 1 and accordingly sustain the rejection of claims 1–20 under 35 U.S.C. § 101.

Principles of Law

An invention is patent-eligible if it claims a "new and useful process, machine, manufacture, or composition of matter." 35 U.S.C. § 101. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: "[l]aws of nature, natural phenomena, and abstract ideas" are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208, 216 (2014) (citation omitted).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court's two-step framework, described in *Mayo* and *Alice*. *Alice*, 573 U.S. at 217−18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75−77 (2012)). In accordance with that framework, we first determine what concept the claim is "directed to." *See Alice*, 573 U.S. at 219 ("On their face, the claims before us are drawn to the concept of intermediated settlement, i.e., the use of a third party to mitigate settlement risk."); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) ("Claims 1 and 4 in petitioners' application explain the basic concept of hedging, or protecting against risk.").

Concepts determined to be abstract ideas, and thus patent-ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219−20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594−95 (1978)); and

mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). Concepts determined to be patent-eligible include physical and chemical processes, such as "molding rubber products" (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); "tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores" (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1853))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held that "a claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula." *Diehr*, 450 U.S. at 187; *see also id.* at 191 ("We view respondents' claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula."). Having said that, the Supreme Court also indicated that a claim "seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment." *Id.* (citing *Benson* and *Flook*); *see*, *e.g.*, *id.* at 187 ("It is now commonplace that an application of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.").

If the claim is "directed to" an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where "we must examine the elements of the claim to determine whether it contains an 'inventive concept' sufficient to 'transform' the claimed abstract idea into a patent-eligible application." *Alice*, 573 U.S. at 221 (citation omitted). "A claim that recites an abstract idea must include 'additional features' to

ensure 'that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].'" *Id.* (quoting *Mayo*, 566 U.S. at 77). "[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention." *Id.*

PTO Guidance

The PTO provides guidance for 35 U.S.C. § 101. USPTO's 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) ("Guidance"). Under the Guidance, we first look to whether the claim recites:

> (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activities such as a fundamental economic practice, and mental processes); and

> (2) additional elements that integrate the judicial exception into a practical application (*see* Manual of Patent Examining Procedure (MPEP) § 2106.05(a)–(c), (e)–(h) (9th ed. 2018)).

84 Fed. Reg. at 52–55. Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then conclude the claim is directed to a judicial exception (*id.* at 54) and look to whether the claim:

> (3) adds a specific limitation beyond the judicial exception that is not "well-understood, routine, conventional" in the field (*see* MPEP § 2106.05(d)); or

> (4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of

6

generality, to the judicial exception.

Id. at 56.

Step 1: Does Claim 1 Fall within a Statutory Category?

There is no dispute that the claimed subject matter falls within a
35 U.S.C. § 101 category of patentable subject matter. Final Act. 8
("statutory category of manufacture"); *see also* Guidance, 84 Fed. Reg.
at 53−54 ("Step 1").

Step 2A(1):[3]Does Claim 1 Recite Any Judicial Exceptions?

We agree with the Examiner that claim 1 recites—and, more
particularly, describes—judicial exceptions. *See* October 2019 Patent
Eligibility Guidance Update ("Guidance Update") at 1 (meaning of
"describe")*, available* at *https://www.uspto.gov/sites/default/files/documents/*

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[3] The Guidance separates the enumerated issues (1) to (4) (*see supra* 6–7)
into Steps 2A(1), 2A(2), and 2B, as follows:

> [T]he revised procedure . . . focuses on two aspects [of whether
> a claim is "directed to" a judicial exception under the first step
> of the *Alice/Mayo* test (USPTO Step 2A)]: (1) [w]hether the
> claim recites a judicial exception; and (2) whether a recited
> judicial exception is integrated into a practical application.
> [W]hen a claim recites a judicial exception and fails to integrate
> the exception into a practical application, . . . further analysis
> pursuant to the second step of the *Alice/Mayo* test (USPTO
> Step 2B) . . . is needed . . . in accordance with existing USPTO
> guidance as modified in April 2018.[footnote omitted]

84 Fed. Reg. at 51 (referencing, via the omitted footnote, "USPTO
Memorandum of April 19, 2018, 'Changes in Examination Procedure
Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility
Decision (*Berkheimer v. HP, Inc.*)' (Apr. 19, 2018), *available* at *https://
www.uspto.gov/sites/default/files/documents/memo-berkheimer-
20180419.PDF* [. . . 'USPTO *Berkheimer* Memorandum'].").

*peg_oct_2019_upd*at*e.pdf*; *see also* 84 Fed. Reg. 55942 (Oct. 18, 2019)
(notifying the public of the Guidance Update). Specifically, we agree
claim 1 is "directed to the concept of data processing for predicting item
characteristic popularity . . . such as item brands, item types, etc."
Final Act. 9–10. We also agree each claim step encompasses
judicially-excepted subject matter as identified in reproduced claim 1.
Ans. 4–7;[4] *supra* 2–3 (unemphasized portions of reproduced claim 1). As
the Examiner finds, the tracking, selecting, calculating, and generating steps
encompass "marketing or sales activities or behaviors to determine which
items should be recommended for listing for sales falls in to the grouping of
'Certain Methods of Organizing Human [A]ctivity'." *Id.* at 7 (emphasis
omitted). The identifying steps, aside from handling *electronic* data, "can be
performed as a Mental [P]rocess." *Id.* And, the calculating steps may
additionally encompass "carrying out calculations using mathematical
relationships." Final Act. 10; *see also* Spec. ¶ 74 ("Bayesian inference is
used to calculate a probability that something is or is not pre-trend/cool.").

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[4] The Examiner does not explicitly identify the claimed receiving
("receiving . . . a query for one or more item listings from the plurality of
item listings published by the network-based publication system") as
judicially-excepted. As this limitation is not at issue (*see infra*), we note it
merely adds a search query that pares the item listings to be evaluated and
such an operation is alone insufficient to confer patent-eligibility. *See
Bascom Glob. Internet Servs., Inc. v.* AT&*T Mobility LLC*, 827 F.3d 1341,
1350 (Fed. Cir. 2016) ([F]iltering of content is an abstract idea.); *see also
W. View Research, LLC v. Audi AG*, 685 F. App'x 923, 926 (Fed. Cir. 2017)
("[R]eceiving or collecting data queries, analyzing the data query, retrieving
and processing the information constituting a response to the initial data
query, and generating a visual or audio response to the initial data query [is]
. . . a patent-ineligible concept.").

We add that the above activities plainly fall within the three categories of judicial exceptions enumerated by the Guidance. *See* 84 Fed. Reg. at 52 (categories). The claimed calculations of metric values encompass "[m]athematical concepts [including] . . . mathematical calculations." *Id.* The claimed assessment of marketplace transaction data, item listings, and purchases at different time intervals to determine popular item characteristics, users who previously purchased corresponding items, and pre-trend item characteristics of those users' recent purchases encompasses "[c]ertain methods of organizing human activity [including] fundamental economic principles or practices [such as] . . . marketing." *Id.* The claimed determining of pre-trend characteristics from people who reliably forecast popular characteristics (e.g., looking to expert stock investors) encompasses "[m]ental processes [including] . . . an observation, evaluation, judgment." *Id.*

For the foregoing reasons, we agree with the Examiner that claim 1 recites judicial exceptions.

Step 2A(2): Are the Recited Judicial Exceptions
Integrated Into a Practical Application?

We agree with the Examiner that claim 1's additional elements do not integrate the judicial exceptions into a practical application. *See* Guidance, 84 Fed. Reg. at 53 (describing a "practical application" as a "meaningful limit on the [recited judicial exceptions], such that the claim is more than a drafting effort designed to monopolize the [exceptions]"); *id.* at 55 ("exemplary considerations . . . indicative [of] a practical application"). Specifically, we agree the additional elements are as identified in reproduced claim 1; that is, they are the claimed use of a "non-transitory

machine-useable storage medium [and] embod[ied] instructions [to]
. . . cause the machine" of a "network-based publishing system" to track,
store, identify, and analyze "electronic . . . data" and to display results on "a
client device . . . display . . . via a graphical user interface (GUI)." *See* Final
Act. 5, 9; *supra* 2–3 (emphasized portions of reproduced claim 1). We also
agree these elements are merely "implementing the [judicial exceptions] on
a generic computer" and, as such, "do[] not integrate the [activities] into a
practical application." Ans. 10; *see also id.* at 12 (citing Spec. ¶¶ 17–20 to
show that examples of the disclosed devices are generic computer devices);
Final Act. 12 (same citation and showing). We further agree the ordered
combination of all claim features results in "one or more generic computers
generating data for [the] display [step], identifying steps, calculating steps,
[and] selecting step," which otherwise "can be implemented manually using
a pen and paper" and thus "do not represent an inextricable tie to . . . a
computer." *Id.* at 11.

We add that claim 1 merely limits the invention's field of use to a
retail merchandise planner by describing the (i) evaluated data as
"marketplace transaction data comprising user interactions with the plurality
of item listings," (ii) the therein-identified data as "popular item
characteristics . . . from a first time interval[,] . . . users who purchased items
having . . . popular item characteristics during a second time interval earlier
than the first time interval[,] . . . [and] pre-trend item characteristics that
correspond to marketplace transactions of the subset of users during a third
time interval more recent than the second time interval," (iii) the selected
subset of users as "based on each user's purchases of the items having
. . . popular item characteristics during the second time interval" (first

metric) and (iv) the generated item recommendations as "based on
. . . purchases of items having . . . pre-trend item characteristics [and] by the
subset of users during the third time interval" (second metric). "Even
though such field-of-use limitations prevent a claim from wholly
pre-empting an abstract idea, . . . they describe only the context rather than
the manner of achieving a result." *Amdocs (Israel) Ltd. v. Openet Telecom,
Inc.*, 841 F.3d 1288, 1311 (Fed. Cir. 2016); *see also id.* ("The Pythagorean
Theorem cannot be made eligible by confining its use to existing surveying
techniques, . . . nor can the business practice of hedging risk . . . by
confining its use to the commodities and energy markets, . . . nor the goal of
gathering and combining data by confining its use to particular types of
photographic information." (internal quotation marks and citation omitted)).

 For the foregoing reasons, we agree with the Examiner that claim 1 is
directed to the recited judicial exceptions—not to a practical application
thereof.

*Step 2B: Does Claim 1 Recite Anything Th*at *Is*
Beyond the Recited Abstract Ideas and Not a Well-Understood, Routine,
Conventional Activity?

 We agree claim 1 recites the "devices and [a] communication network
. . . at high level of generality" (namely the network-based publication
system) and "a generic non-transitory machine-useable storage medium [of]
instructions. . . caus[ing a] machine to . . . interact[] with generic client
machines via a network[,] such as Internet[, to] implement[] steps of
tracking and storing data, receiving a query, identifying different types of
data based upon pre-determined criteria, calculating values from collected
data, selecting and outputting/displaying data." Final Act. 5–6 (citing
Spec. ¶¶ 17–20 to show the disclosed examples are generically described);

see also Ans. 12–13. We also agree these features are analogous to the

following computer operations found conventional by the Supreme Court

and Federal Circuit, e.g., "normal, basic" arranging, storing, retrieving,

sorting, eliminating, and determining (*Vers*at*a Dev. Grp., Inc. v. SAP Am.,

Inc.*, 793 F.3d 1306, 1335 (Fed. Cir. 2015)); use of a mathematical formula

to calculate a value (*Flook*, 437 U.S. at 586); a computer's basic calculation,

storage, and transmission functions, e.g., electronic recordkeeping (*Alice*,

573 U.S. at 225–26); receiving or transmitting data over a network, e.g.,

using the Internet to gather data (*buySAFE, Inc. v. Google, Inc.*, 765 F.3d

1350, 1355 (Fed. Cir. 2014)). Final Act. 6, 13; *accord* MPEP §

2106.05(d)(II) ("The courts have recognized the following computer

functions as well-understood, routine, and conventional functions when they

are claimed in a merely generic manner (e.g., at a high level of

generality).").

   For the foregoing reasons, we agree with the Examiner that claim 1

merely appends judicial exceptions to conventional technology.

Appellant's Arguments

   We have reviewed Appellant's arguments. Appeal Br. 8–22. In view

of the above analysis, we are unpersuaded the Examiner erred. At the

outset, we repeat that the Examiner has shown each claim limitation

constitutes either judicial exceptions described by the Guidance (*supra* Step

2A(1)) or technology described by judicial precedent as conventional

(*supra* Step 2B). The Examiner has also shown claim 1's ordered

combination of activities and technology requires only to execute the

judicial exceptions on generic devices that, as any computer does, uses

machine instructions to track, store, identify, analyze, and display electronic

data on a networked system (e.g., a client device thereof). *Supra* Step 2B.

Appellant does not meaningfully rebut the Examiner's findings. *See In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984) ("[T]he burden of . . . [r]ebuttal is . . . a showing of facts supporting the opposite conclusion." (internal quotation marks and citation omitted)); SHOW, *Black's Law Dictionary* (10th ed. 2014) ("To make (facts, etc.) apparent or clear by evidence; to prove"). For example, Appellant does not present evidence or reasoning that indicates: a claim feature was wrongly identified as a judicial exception or conventional activity; or a combination of claim features prevents preemption of the recited judicial exceptions. We address, below, some of the arguments for emphasis.

Appellant contends the Examiner characterizes "small portions" of claim 1, analogizes each characterization (portion) to an abstract idea identified by judicial precedent, and then erroneously concludes the analogy applies to the claim as a whole. Appeal Br. 11. We are unpersuaded because, as discussed above, the Examiner followed the Guidance's procedure for concluding a claim is directed to judicially-excepted subject matter. *Supra* Steps 2A(1) and (2). The followed procedure consists of determining: the claim recites judicially-excepted subject matter (Step 2A(1)); and the claim as a whole does not integrate a recited judicial exception into a practical application (Step 2A(2)). Guidance, 84 Fed. Reg. at 53; *see also id.* at 51–52 (explaining the Guidance alone may be used to show a claim   is directed to judicially-excepted subject matter). Though

having an opportunity to address the Examiner's findings in light of the Guidance's above procedure, Appellant does not do so in the Reply Brief.[5]

Appellant also contends the Examiner is "oversimplifying" the claimed invention by determining claim 1 is directed to "providing improved search results and/or recommendations from a plurality of published item listings by collecting transaction data of users from marketplace, analyzing it and displaying/outputting certain results of the collection and analysis" and "advis[ing] a user about improved search results and/or recommendations based upon the analysis of collected transaction data." Appeal Br. 11 (quoting Final Act. 3–4). We are unpersuaded because the Examiner does not generalize claim 1 as above to avoid—nor does the Examiner avoid—discussing the specific claim restrictions. Rather, after explaining why each claim limitation constitutes a judicial exception, the Examiner generalizes the claim as above to explain why the claim as a whole is not directed to a practical application of the judicial exceptions. *See e.g.*, Final Act. 4 ("The [claim] steps . . . are neither inextricably tied to computer functioning nor recite any improvement in computer-related technology[. They] do no more than advise a user about improved search results and/or recommendations based upon the [abstract] analysis of collected transaction data."); *see also id.* at 5 (using the above generalization to explain claim 1 is directed to a "business solution" and, accordingly, not analogous to the patent-eligible claims of *Enfish, LLC v. Microsoft Corp.,* 822 F.3d 1327 (Fed. Cir. 2016), *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016), *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245

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[5] The Appeal Brief was filed before publication of the Guidance in January 2019. The Answer and Reply Brief, however, were filed thereafter.

(Fed. Cir. 2014), and *Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016)).

Appellant contends claim 1 as a whole is directed to a "specific mechanism" for solving a technological problem and, namely, for using electronic marketplace data to identify users who have purchased popular items before they were popular, identifying other such items the users purchase, and thereby identifying those other items as likely to be popular. Reply Br. 4–7; *see also* Appeal Br. 16–21 (presenting this vein of argument with reference to *McRO*, *Bascom*, and *Amdocs*). Appellant further contends these identifications consist of calculating first and second "metric values," selecting users based on the first metric value, and generating display data based on the second metric value. *Id.* at 4–5.

We are unpersuaded because Appellant alleges a claimed "specific mechanism" but does not address the meaning of a "specific." *McRO*, which Appellant notes (Appeal Br. 28) but does not address with particularity, is highly instructive as to whether a claim is directed to a judicial exception or rather recites a "specific" means of implementing the exception. *See* 837 F.3d at 1313–16. Describing an abstract idea as a "result," *McRO* distilled the issue to whether a claimed means of a result is sufficiently specific to prevent preemption of the result. *Id.* at 1314. In holding the claim overcame this concern, *McRO* identified such a claimed means ("first set of rules") that applied unconventional data ("a keyframe at a point that no phoneme is being pronounced") to the recited mathematical formula ("morph weight") and thereby prevented preemption the formula. *Id.* at 1307; *see also id.* at 1315 (emphasizing that the unconventional appointment of keyframes to phoneme *sub-*sequences prevented preemption

of the morph-weighting). *Id.* at 1315. Appellant's contentions do not
indicate (much less show) claim 1's features prevent preemption of the
recited judicial exceptions (e.g., do not preempt use of a mathematic
calculation to identify popular items). Appellant rather summarizes some
case law, identifies claim features, and cursorily alleges the features are
specific and result in a technological improvement. Reply Br. 4–7;
Appeal Br. 16–21.

Appellant contends the claimed calculating of "metric values" and
display of resulting data cannot be "practically performed in the human
mind." Reply Br. 4–5 (emphasis omitted). We are unpersuaded because,
though an activity is not a mental process unless "practically" performable in
the mind (Guidance, 84 Fed. Reg. at 52, n. 14), Appellant merely alleges—
does not support with evidence or reasoning—the claim operations identified
by the Examiner as a mental process (*see supra* Step 2A(1)) cannot be
practically performed in the mind. Mere allegations are not meaningful
rebuttals. *Piasecki*, 745 F.2d at 1472 (parenthetically described above).

Appellant contends: "[B]ecause the displayed listings are more likely
to be relevant than in conventional systems, users often will not need to
. . . perform new searches, thereby reducing processing requirements of the
system as well as reducing bandwidth requirements." Reply Br. 7. We are
unpersuaded because, even if correct, the contentions do not indicate (much
less show) the above alleged improvements result from claim features that
are not judicially-excepted. *See SAP Am.*, 898 F.3d at 1163 ("[An] advance
[that] lies entirely in the realm of abstract ideas . . . is ineligible for
patenting."); *see also* Final Act. 14 (finding claim 1's judicial exceptions,

and not the identified additional elements (*see supra* Step 2A(2)), patentably distinguish the invention over the prior art).

Appellant contends the claimed invention patentably distinguishes over the prior art and therefore comprises unconventional activities that ensure claim 1 does not preempt the recited judicial exceptions. Appeal Br. 21–22. We are unpersuaded because overcoming 35 U.S.C. §§ 102 and 103 is not a dispositive consideration for 35 U.S.C. § 101. *See Mayo*, 566 U.S. at 90 ("[I]n evaluating the significance of additional steps, the § 101 patent eligibility inquiry and, say, the § 102 novelty inquiry *might sometimes* overlap." (emphasis added)). To prevail in this vein of argument, Appellant must at least (but does not) identify a claim feature that distinguishes over the prior art and lies outside the realm of abstract ideas. *See SAP Am.*, 898 F.3d at 1163 (see above parenthetical description).

CONCLUSION

For the foregoing reasons, we affirm the Examiner's decision to reject claims 1–20.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1–20	§ 101	Eligibility	1–20	

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED